

**Notice of Allowability**

Application No.

10/648,719

Examiner

Matthew L. Fedowitz

Applicant(s)

HAMASAKI ET AL.

Art Unit

1623

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 6/13/2005.
2. ☒ The allowed claim(s) is/are 1-3 and 5-14.
3. ☒ The drawings filed on 8/27/2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 8/27/2003
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

**JAMES O. WILSON**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

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**DETAILED ACTION**

Claim 4 has been cancelled. Claims 1, 5, 6 and 7 have been amended. Claims 13 and 14 have been added. Claims 1 and 3 are subject to an Examiner's Amendment. Claims 1-4 and 5-14 are allowable.

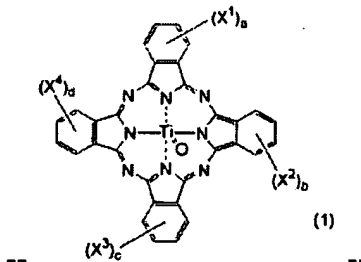
During an interview with Mary Montebello on August 19, 2005 an agreement was reached as to the manner in which the claims should be amended by Examiner's Amendment (below) to put the claims 1 and 3 in condition for allowance.

***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the charges and/or additions be unacceptable to the applicant, an amendment may be filed as provided by 37 CR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

1. In claim 1, the phrase "does not have a peak of a change in temperature within a range from 50 to 400°C. except" has been changed. The claim should read as follows: ...and the crystal --does not have a change in peak at a temperature within the range from 50-400°C except--.
2. In claim 3, the structure below should be added after the phrase "represented by the formula(1):." The claim should read as follows: ...represented by the formula (1):



wherein  $X^1$ ,  $X^2$ ,  $X^3$  and  $X^4$  are the same or different.

***Examiner's Comments***

The applicant's arguments are found to be persuasive thereby obviating the 35 USC §103(a) rejections.

Claims 1-4 and 5-14 are allowable because the claimed subject matter is not taught or fairly suggested in the prior art. The prior art does not teach a phthalocyanine crystal that is formed by the same methods as claimed by the applicant. Specifically, the critical element of the applicant's claims that are divergent from the prior art is the fact that the recovered crystal with a maximum peak at a Bragg angle  $2\theta \pm 0.2^\circ = 27.2^\circ$  without a peak at  $7.4^\circ$  in a  $\text{CuK}\alpha$  characteristic X-ray diffraction spectrum was dipped in an organic solvent for seven days. The prior art does not teach or fairly suggest dipping in an organic solvent for seven days. Further, the phthalocyanine crystal produced in the manner claimed by the applicant has the unexpected property of having a significantly improved storage stability compared to that found in the prior art.

The closest prior art is found in Hamasaki et al.; however, as stated above, Hamasaki et al. does not teach or fairly suggest dipping the phthalocyanine for seven days in an organic solvent.

***Conclusion***

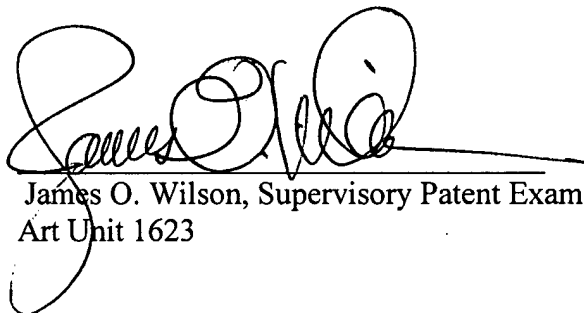
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew L. Fedowitz whose telephone number is (571) 272-3105. If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, James O. Wilson, can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Matthew L. Fedowitz, Pharm.D., Esq.



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James O. Wilson, Supervisory Patent Examiner  
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